

## Subdivision 12. Concentrated Animal Feeding Operation Regulations

An adequate supply of healthy livestock, poultry and other animals is essential to the well-being of County citizens. However, livestock, poultry and other animals produce manure which may, where improperly stored, transported, or disposed, negatively affect the environment of Grand Forks County. Animal manure must be controlled where it may add to air, surface water, ground water, or land pollution.

The following Ordinance, based on the Model Animal Feeding Ordinance issued by the North Dakota State Health Department, regulating the permitting, location, development, and expansion of feedlots has been adopted to protect the natural environment and to safeguard the public health, safety, and general welfare of the citizens of Grand Forks County.

These Ordinances are in addition to and complementary to all Federal and State Regulations and guidelines, including but not limited to, "North Dakota Department of Health Guidelines for Approval of Livestock Waste Systems"(latest draft), USDA-SCS-North Dakota January 1986 Technical Guide Notice ND-49 and USDA-SCS-North Dakota November 1988 Technical Guide Notice ND-99".

### 1. GENERAL PROVISIONS

#### a. Definitions

Agriculture (Farming, Ranching)--The art or science of cultivating the soil and activities incidental thereto; cultivating land for production of agricultural crops or livestock; raising, feeding, or producing livestock, poultry, milk, or fruit. The term shall include incidental retail selling by the producer of products raised on the premises, provided that space necessary for parking of vehicles of customers shall be furnished off the public right-of-way. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies, provides grain, harvesting grain, or other farm services. See also Section 11-33-02 of the North Dakota Century Code as amended in 1999.

This definition shall replace the definition of agriculture as stated on page 4 of these Ordinances.

Animal Feeding Operation--A place where livestock have been, are or will be confined, concentrated and fed for 45 or more days in any 12 month period; pasture crops, or other vegetation are not normally managed or sustained for grazing during the normal growing season; and, animal waste or manure accumulates. This term does not include an animal wintering

operation. Two or more animal feeding operations under common ownership shall be considered a single animal operation if they are within a one mile radius of each other, or if they use a common area, or if they use a common system for manure handling.

**Animal Feeding Operation Structure**—lagoon, formed manure storage, washwater storage structure, earthen manure storage basin, or any animal confinement building.

**Animal Wintering Operation**—The confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. The term includes the weaned offspring of cattle and sheep, but it does not include (1) breeding operations of more than 1,000 animal units or (2) weaned offspring which are kept longer than 120 days and that are not retained for breeding purposes.

**Applicant**—An individual, corporation, group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more animal feeding operations

**Aquifer**—Geologic formation, group of formations, or part of a formation capable of storing and yielding ground water to wells and springs.

**Closure**—Taking of those actions to close and reclaim a feedlot. Closure actions may include, but are not limited to, cleaning of buildings, disposal of manure, and demolition and/or removal of all manure storage structures.

**Due Process**—Involves two essential elements; (1) notice and (2) an opportunity for a hearing. The notice must adequately describe the potential action that might affect the person(s) being notified and it must provide the person(s) a reasonable time to respond. If the person(s) request(s) a hearing, the hearing must be fair and allow the person(s) to present relevant evidence and arguments.

**Earthen Manure Storage Basin**—An earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from an animal feeding operation and where accumulated wastes from the basin are removed at least once a year.

**Established Residence**—Any residence established by a personal presence, in a fixed and permanent dwelling with an intention to remain there

Existing—In place and operating on the date this ordinance is effective.

Farming—See Agriculture

Feedlot, Agricultural—Delete definition as found on Page 6 of these Ordinances

Feedlot, Commercial—Delete definition as found on Page 6 of these Ordinances.

Flood plain—Lowland and relatively flat areas adjoining inland and costal waters that are inundated by a one-hundred (100) year flood.

Ground Water—Water below the land surface in a geological unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.

Lagoon—An impoundment made by excavation or earthfill for biological treatment of animal or other agricultural wastes. Lagoons can be aerobic, anaerobic or facultative, depending on their loading and design.

Livestock—Any animal raised for food, raw materials, or pleasure, including, but not limited to, beef and dairy cattle, bison, sheep, swine, poultry, and horses. Livestock also includes fur animals raised for pelts.

Livestock Waste Lagoon—Delete definition as found on Page 9 of these Ordinances.

Manure—Means fecal material and urine from livestock, as well as animal-housing wash water, bedding material, rainwater, or snow melt that comes in contact with fecal material or urine.

Operator—An individual, corporation, cooperative, group of individuals, partnership, joint venture, or any other entity owning or controlling one or more animal feeding operations or animal wintering operations.

Pollution, Air—The presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal, or plant life or which unreasonably interferes with the enjoyment of life or property.

Pollution, Water—Manmade or man-induced alteration of the physical, chemical, biological integrity of any Waters of the State.

**Public Well**—A well that access the Waters of the State for distribution to the public. This includes the defined source-water production area land mass around the well.

**Ranching**—See Agriculture

**Runoff**—The portion of precipitation or irrigation or other liquid that makes its way toward streams, rivers, lakes, or other bodies of water as surface or subsurface flow

**Shall**—The requirement is mandatory, rather than optional.

**Source-Water Protection Area**—Boundary which defines the surface and subsurface area surrounding a water well or a well field, which supplies a public water system and through which contaminants are likely to move toward and reach such water well or field.

**Stream**—Any running body of surface water that ordinarily flows within a channel. This includes both perennial and intermittent streams.

**Surface Water**—Waters of the State located on the ground surface such as lakes, reservoirs, rivers, and creeks.

**Waters of the State**— All waters within the jurisdiction of this State, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the State except those private waters that do not combine or effect a junction with natural surface or underground waters just defined.

b. Equivalent Animal Numbers

An “animal unit equivalent” is a unitless number developed from the nutrient and volume characteristics of manure for a specific livestock type. The term “animal units” is used to normalize the number of animals (e.g., head) for each specific livestock type which produce comparable bulk quantities of manure. The animal unit equivalents for types of livestock and the number of livestock for facility thresholds of 500 animal units (a.u.), and so forth are listed in the following table:

**Equivalent Numbers of the Livestock (hd) for Three  
Sizes (a.u) of Animal Feeding Operations**

<b>Livestock</b>	<b>Animal Unit Equivalent</b>	<b>500 a.u</b>	<b>1,000 a.u</b>	<b>10,000 a.u</b>
1 horse	2.0	250 hd	500 hd	5,000 hd
1 dairy cow	1.33	375	750	7,500
1 mature beef	1.0	500	1,000	10,000
1 beef feeder- finishing	1.0	500	1,000	10,000
1 beef feeder- backgrounding	0.75	666	1,333	13,333
1 mature bison	1.0	500	1,000	10,000
1 bison feeder	1.0	500	1,000	10,000
1 swine>55 lbs.	0.4	1,250	2,500	25,000
1 goose or duck	0.2	2,500	5,000	50,000
1 sheep	0.1	5,000	10,000	100,000
1 swine, nursery	0.1	5,000	10,000	100,000
1 turkey	0.0182	27,500	55,000	550,000
1 chicken	0.01	50,000	100,000	1,000,000

**c. Environmental Protection**

The operator of a new facility for animal feeding is expected to locate, construct, operate and maintain the facility so as to minimize, reduce, or abate effects of pollution on environmental resources and on public safety and health. The operator of an existing facility is expected to operate and maintain the facility so as to minimize, reduce, or abate effects of pollution on environmental resources and on public safety and health. Each operator shall comply with applicable state laws and rules, including the laws and rules administered by the North Dakota Department of Health and with any permits granted by that department.

**d. Holding Facilities**

(1) Earthen Manure Storage Basin

- (a) Plans for an earthen structure for any operation shall be approved by Professional Engineer (P.E.) Registered in the State of North Dakota.
  - (b) Soil testing to determine the engineering properties of the earthen structure and natural liner materials shall be conducted under the supervision of a qualified professional soil scientist.
  - (c) The bottom side slopes shall be made of relatively impervious material that will permit a maximum seepage rate not to exceed 1/56 inch per day.
  - (d) The bottom of the storage facility shall be at least four (4) feet above the highest water table elevation.
  - (e) Any manure storage structure which is unused or abandoned for three (3) or more years shall be properly abandoned to the satisfaction of the State Health Department.
- (2) All manure holding facility valves shall have proper security measures to prevent accidental or malicious opening.
- (3) All manure holding structures shall be enclosed with suitable fence to preclude entrance of livestock and discourage trespassing. A vehicle access gate of sufficient width to accommodate mowing equipment shall be provided. All access gates shall be provided with a lock. Fences shall be located away from the outside toe of storage basin to facilitate dike mowing and maintenance operations. Appropriate signs shall be provided along the fence around the storage structure to designate the nature of the facility and advise against trespassing.

e. Enforcement

- (1) This Animal Feeding Operation Ordinance shall be administered and enforced by the County Zoning Administrator with assistance from other County departments as deemed necessary. The Zoning Administrator shall have the following duties and powers:
- (a) Review permits, management plans and other information as required by this Ordinance.
  - (b) Order work stopped whenever work is being done contrary to the provisions of this Ordinance. Such notice shall be personally served

upon the owner or operator.

- (c) Issue authorization to proceed when violations of this Ordinance have been remedied.
  - (d) Assist feedlot owners or operators with the permitting process.
  - (e) Process applications to ensure compliance with this Ordinance.
  - (f) Issue permits required by this Ordinance.
  - (g) Forward any recommendations or information to the State Health Department or other appropriate agency.
  - (h) Maintain records and permits as required by this Ordinance. Any records required to be maintained by the State Health Department shall be provided to the Zoning Administrator upon request.
  - (i) Provide information to feedlot owners and operators and the general public concerning this Ordinance.
  - (j) Inspect feedlot operations to insure compliance with the standards of this Ordinance.
- (2) In the event of a violation of this Ordinance or a judgement on a civil action by the North Dakota Department of Health, the County, after due process, can order cessation of a facility for animal feeding within a reasonable period of time and until such time as the operator corrects or abates the cause(s) of violation. The County may institute appropriate actions or proceedings, including requesting injunctive relief, to prevent, restrain, correct or abate such violations. If the cause(s) of the violation are not remedied within a reasonable period of time as set by the County, the permit may be revoked. All costs incurred for corrective action may be recovered by the County in any manner recommended by the Office of the States Attorney. These and other remedies, as determined appropriate by the Board of County Commissioners, may be imposed upon the owner, operator or other responsible person either in addition to or separate from other enforcement actions.

f. Penalty

- (1) If it is shown that any Animal Feeding Operation is in violation of any portion of this Ordinance or regulation thereunder, the Operation is guilty

of a Class B Misdemeanor as per Century Code Section 11-33-21. Notice of violations shall be personally served upon the owner or operator.

- (2) Unless another penalty is specifically prescribed, a person violating this Ordinance, or any rule, order, or condition in a permit issued under this Ordinance, may be subject to a civil penalty as per North Dakota Century Code Section 23-29-12.
- (3) If such violations are not remedied within a reasonable period of time as set by the Board of County Commissioners, the Special Use Permit for Animal Feeding Operations may be revoked. Such notice shall be personally served upon the owner or operator.

g. Severability

- (1) If any, paragraph, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this ordinance.
- (2) If the application of this Ordinance to any particular property, building, or structure is for any reason held to be invalid or unconstitutional by a decision of competent jurisdiction, such decision shall not affect the validity of any other property, buildings, or structures.

h. Insurance Requirements

Prior to the issuance of a permit, the applicant shall provide to the Zoning Administrator proof of insurance, a financial guarantee bond, or some other proof of adequate funds in the amount of \$25,000 for a facility with 500 to 1,000 animal units and \$50,000 for a facility with 1,001 or more animal units (or some other amount as deemed necessary by the Planning and Zoning Commission) to cover cleaning of buildings, waste systems, and emptying and filling, demolition and \or removal of holding ponds in the event of closure of the animal confinement operation.

i. Closure and Abandonment

- (1) The landowner, owner and operator of any concentrated animal feeding operation shall be responsible for the ongoing management of manure and the final closure of the feedlot including the cleaning of buildings and proper disposal of manure from all manure storage structures and demolition and/or removal of all manure storage structures.



- (2) Owners and operators of any concentrated animal feeding operation shall have joint and several liability for clean-up, closure or remediation of abandoned sites.

j. Complaints

- (1) Any complaint against a Concentrated Feeding Operation must be in writing and signed.
- (2) All such complaints shall be investigated by the Zoning Administrator and, if necessary, referred to the State Department of Health or other appropriate agency.

2. SETBACK REQUIREMENTS

a. Water Resource Setbacks

The operator or a new animal feeding operation that has more than 500 animal units shall not locate or establish that operation:

- (1) Within ½ mile of a delineated source water protection area for a public water system. The source water protection areas for water supply wells include the entire wellhead protection area. For the surface-water intakes of public water systems, source water protection areas include all or portions of the surface water that supplies the water for the public water system, including all or portions of the surface-water's shoreline.
- (2) Within ½ mile of private wells into the aquifer; Public water supplies; defined aquifers, lakes and streams.
- (3) Within 1/8 mile of other Waters of the States.
- (4) Within a designated 100 year flood plain.

b. Odor Setbacks

An owner of property shall locate and establish a residence, business, church, school, public park or zone for residential use so as to provide the same separation distance from any existing animal feeding operation unless a waiver is executed and duly recorded with the property deed at the Office of the Register of Deeds. Dwellings of owners or operators are exempt. The separation distances, or setbacks are listed in the following table:

### Setback Distance for Animal Feeding Operations

	Animal Units	Hog Operations	Other Animal Operations
Established Residences	Less than 500	None	None
	500 to 1,000	1 Mile	1 Mile
	1,001 to 10,000	1 ½ Mile	1 Mile
	More than 10,000	3 Miles	2 Miles
Churches, Businesses, Commercially Zoned Areas, Recreational Areas, Schools	Less than 500	None	None
	500 to 1,000	1 Mile	1 Mile
	1,001 to 10,000	1 Mile	1 Mile
	More than 10,000	2 Miles	1 1/4 Mile
Incorporated City Limits and Unincorporated Platted Limits	Less than 500	None	None
	500 to 1,000	2 Miles	2 Miles
	1,001 to 10,000	3 Miles	2 Miles
	More than 10,000	6 Miles	4 Miles
Federal or State Highway ROW	Less than 500	None	None
	500 to 1,000	½ Mile	½ Mile
	1,001 to 10,000	½ Mile	½ Mile
	More than 10,000	½ Mile	½ Mile
County Road ROW and Adjacent Property Lines	Less than 500	None	None
	500 to 1,000	150 Feet	150 Feet
	1,001 to 10,000	150 Feet	150 Feet
	More than 10,000	150 Feet	150 Feet

The operator of a new animal feeding operation shall locate the site of that operation from the above stated existing areas so as to exceed the corresponding listed setback.

If notified in writing by an operator of a planned future expansion of an animal feeding operation, the local unit of government may implement the corresponding odor setback for a temporary time period not to exceed two years, after which time the setback will remain in effect only if the expansion was completed.

The County may, upon recommendation of the Planning and Zoning Commission or Zoning Administrator, increase or decrease a setback distance for a new animal feeding operation after consideration of the proposed operation's plans, if it determines that a greater or lesser setback distance is necessary or acceptable, respectively, based upon site conditions or demonstrable safety, health, environment or public welfare concerns.

### 3. CONDITIONAL USES AND PERMIT PROCEDURES

#### a. Applicability

- (1) The operator of a new livestock facility or an existing livestock facility, which meets the definition of an animal feeding operation and which is a special use of land as listed below, shall apply for and obtain a Special Use Permit:
  - (a) A new animal feeding operation that would be capable of handling, or that expands to handle, more than 500 animal units is a special use of land.
  - (b) An existing animal feeding operation that expands to handle more than 500 animal units is a special use of land.
- (2) Whenever the capacity of an animal feeding operation is expanded to handle more than 1,000 or 10,000 animal units, the operator shall apply for a new Special Use Permit.
- (3) Whenever a former animal feeding operation is to be restocked after being idle for three (3) or more years, the operator shall apply for a new Special Use Permit.
- (4) Whenever a signed complaint has been received by the Zoning Administrator or the North Dakota Health Department and inspection reveals that the animal feeding operation should have had a permit pursuant to this Ordinance, the operator shall apply for a Special Use Permit.

(5) Whenever a change in ownership or operational control occurs, the new owner or operator shall apply for a new Special Use Permit.

b. Ownership Change

An operator of a facility that includes an animal feeding operation having a permit granted by this Ordinance shall notify the local unit of government of the sale, or the transfer of the ownership of that operation.

c. Operating Change

An operator of a facility that includes an animal feeding operation having a permit granted by this Ordinance shall notify the Zoning Administrator of intent to include an alternate livestock type. The notice shall be given at least 120 days prior to the anticipated date of the change.

d. Procedure

- (1) Application for a Special Use Permit shall be submitted to the Zoning Administrator along with the animal feeding operations information form a minimum of twenty-one (21) days prior to the Public Hearing. The Zoning Administrator shall notify the Department of Health that such application has been received. This Special Use Permit application shall be available for public inspection at the Office of the Zoning Administrator for two (2) weeks prior to the Public Hearing.
- (2) The Zoning Administrator shall notify by certified mail all property owners having property within the corresponding odor setback distance of a proposed new animal feeding operation or the expansion of an existing animal feeding operation. This notification must be within twenty-one (21) days of receiving the application. Along with the application, the applicant shall provide the names and addresses of all landowners to be notified.
- (3) Upon receipt of the Special Use Permit Application and animal feeding operation information form, the County Planning and Zoning Commission shall hold at least one (1) Public Hearing in a location to be prescribed by the Planning and Zoning Commission. At least fourteen (14) days in advance of each hearing, notice of the time and place of such hearing shall be published in the official newspaper of the County and any other such paper as deemed necessary by the Zoning Administrator. All townships within two (2) miles and all incorporated municipalities and unincorporated platted limits within six (6) miles shall be notified by U. S. Mail at to the time and place of the Public Hearing.
- (4) The County Planning and Zoning Commission shall report its findings to the Board of County Commissioners.

- (5) Following tentative approval or denial of the application by the Board of County Commissioners, the applicant shall be notified by mail of the decision, including conditions imposed, if any.
- (6) The applicant shall then forward its application for a Special Use Permit, together with the tentative approval by the Board of County Commissioners, to the North Dakota Department of Health.
- (7) Following a review by the Department of Health of the operator's application for a state permit, the Department of Health will notify the County of its decision.
- (8) The Special Use Permit will become final following the granting of a permit by the Department of Health.
- (9) A Special Use Permit granted to the operator of a new animal feeding operation shall be put into use within twenty-four (24) months, or the permit shall lapse and the operator may re-apply.
- (10) No construction shall take place until the a permit has been issued by the North Dakota Department of Health.

e. Fees

- (1) The fee for each Special Use Permit application for animal feeding operations shall be as noted in SECTION 13A FEES.
- (2) There shall be an annual renewal fee as noted in SECTION 13A FEES.

f. Application Requirements

- (1) The application for a Special Use Permit to operate an animal feeding operation shall include a scaled site plan. If the facility will handle more than 1,000 animal units, the scaled site plan shall be prepared by a registered land surveyor, a civil engineer or other person having comparable experience or qualifications. The site plan shall include building and waste system locations, ground elevations, setback from roads and/or highways and adjoining property, current land use, location of any active or abandoned wells, the location of any surface water, the drainage pattern of the site, and all existing or proposed accesses.
- (2) Owners name, address and telephone number
- (3) Legal description of the site.

- (4) Number and type of animals.
- (5) Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.
- (6) A copy of the application submitted to the Department of Health.
- (7). Manure management and operation, photocopy as submitted to the North Dakota Department of Health.
- (8). Management plan for fly and odor control, photocopy as submitted to the North Dakota Department of Health.
- (9). Management plan for disposal of dead animals, photocopy as submitted to the North Dakota Department of Health.
- (10). Nutrient management plan, photocopy as submitted to the North Dakota Department of Health.
- (11). Information on soils and aquifers
- (12). Other information as required in application and/or requested by the Zoning Administrator or Planning and Zoning Commission.

g. Miscellaneous

- (1) The applicant shall develop, maintain, and follow a nutrient plan to ensure safe disposal of manure for the protection of surface and ground water as per guidelines listed in the latest draft of the "North Dakota Department of Health Guidelines for Approval of Livestock Waste Systems". A copy of such plan as submitted to the North Dakota Health Department shall be provided to the Zoning Administrator.
- (2) The applicant shall develop, maintain, and follow a manure management and operation plan to ensure safe storage and application of manure and to protect surface and ground water as per North Dakota Health Department requirements. A copy of such plan shall be submitted to the Zoning Administrator.
- (3) The Planning and Zoning Commission may request information relating to an animal feeding operation not contained in these regulations.
- (4) The Planning and Zoning Commission may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which the Planning and Zoning Commission considers necessary

to protect the public health, safety, and welfare of Grand Forks County citizens. This shall include additional monitoring if the possibility exists that groundwater or surface water quality may be compromised.

- (5) Any and all cost to implement any additional conditions as set forth by the Planning and Zoning Commission shall be borne by the owner of the facility.
- (6) When considering an application, the Planning and Zoning Commission will take into consideration current and past violations relating to animal feeding operations that the applicant or operator has or has had an interest in.
- (7) All State and Federal regulations shall be adhered to.